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Zynga Inc.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO**

ZYNGA INC.,

Plaintiff,

v.

SCOPELY, INC., a Delaware
Corporation, MASSIMO MAIETTI, an
individual, and EHUD BARLACH, an
individual,

Defendants.

Case No.

COMPLAINT FOR

**1. MISAPPROPRIATION OF
TRADE SECRETS (SCOPELY
AND MAIETTI)**

**2. BREACH OF WRITTEN
CONTRACT (MAIETTI)**

**3. BREACH OF WRITTEN
CONTRACT (BARLACH)**

**4. TORTIOUS INTERFERENCE
WITH CONTRACT (SCOPELY)**

JURY TRIAL DEMANDED

1 Plaintiff Zynga Inc. (“Zynga”) alleges the following against Defendants
2 Scopely, Inc. (“Scopely”), Massimo Maietti (“Maietti”), and Ehud Barlach
3 (“Barlach”) (collectively, “Defendants”):

4 **NATURE OF THE CASE**

5 1. Zynga is a leader in the mobile and online social game industry. Its
6 *FarmVille* and *FarmVille2* games have been played by more than 400 million
7 people, and its *Words With Friends* game is the world’s most popular mobile word
8 game with more than 55 million matches being played at any moment. Zynga has
9 released numerous other successful games, including *CityVille*, *CastleVille*,
10 *FarmVille2: Country Escape*, *Zynga Poker*, and *Mafia Wars*, and it continues to
11 devote significant time and resources into the development of new games to
12 promote to its broad and deep customer base.

13 2. The social gaming industry is highly competitive, and not just in
14 attracting players in the marketplace to a particular game, but in recruiting, hiring
15 and developing top talent who know how to design and develop hit games. Zynga
16 respects the rights of its employees to resign and seek employment with other
17 companies. But Zynga cannot tolerate the wholesale theft of some of its most
18 sensitive and commercially valuable data, or a competitor that competes unfairly by
19 not respecting, and even encouraging the breach of, the contractual obligations of
20 Zynga’s current and former employees. Zynga has no choice but to bring this
21 lawsuit to recover its stolen data, ensure no use is made of it, and to curb the
22 knowing and deliberate unlawful conduct of a direct competitor.

23 3. Prior to going to work for Scopely, Maietti worked for Zynga as a
24 senior level game designer on some of Zynga’s most popular existing games and
25 important upcoming games. For over a year before he left, Maietti was the Creative
26 Director on one of Zynga’s most ambitious soon-to-be released games, which goes
27 by the code name “Project Mars.” Maietti is under a contractual obligation with
28 Zynga to keep Zynga’s information confidential and re-affirmed upon his exit

1 interview that he was not taking any Zynga confidential information with him.

2 4. Forensic analysis conducted on Maietti's Zynga-issued computer
3 revealed that Maietti did not abide by his contractual obligations to Zynga. On July
4 4, 2016 – during the Independence Day holiday and just one day before he gave
5 notice of his resignation of employment from Zynga – Maietti's Internet history
6 shows that Maietti used the Google Chrome browser on his Zynga-issued laptop to
7 access a Zynga-owned Google Drive account. His browser history shows that he
8 proceeded to download ten Google Drive folders that he had permission to access,
9 but only as necessary to perform his duties for Zynga. The Google Chrome
10 browser "zipped" those ten files and downloaded them to his File Downloads
11 folder. Once downloaded, forensic analysis shows that Maietti copied nine of those
12 folders to a connected external USB device. The external USB device was
13 disconnected from the computer, and Maietti then placed the zip files in the Trash,
14 while they remained on the USB device. On July 7, 2016, over 20,000 files and
15 folders were located within the Trash but were subsequently deleted in a failed
16 attempt by Maietti to cover his tracks.

17 5. The nine zipped folders taken by Maietti have identical names to those
18 in Zynga's Google Drive account, but Maietti appended the date those files were
19 stolen to the name of each folder. An analysis of the corresponding Google Drive
20 folders reveals that Maietti took over 14,000 files and approximately 26 GB of
21 extremely sensitive, highly confidential Zynga information.

22 6. Particularly egregious was Maietti's apparent wholesale copying of the
23 Project Mars folder. This folder contains the work of the entire Project Mars team
24 in developing a game that pushes the standards of social gaming to a new
25 level. Project Mars introduces complex gameplay interactions and systems built
26 upon cutting-edge, revolutionary technology developed over the past 18 months by
27 a team of engineers, artists, and product managers.

28

1 7. Other files contained in the zip folders taken by Maietti include:

- 2 • Hundreds of detailed design specifications for features that drove
3 engagement and revenue within some of Zynga's most popular games,
4 including *Farmville 2* and *CastleVille*, such as features of the week
5 ("FOTW"), bold beats, and limited edition ("LE");
6 • Unreleased game design documents that describe material features and
7 game play, pitches, conceptual renderings of characters and scenes, mock-
8 ups of game play and related information;
9 • Compilations of various Zynga learnings, including "best practices" for
10 game design and team management, and detailed process documents
11 relating to feature development and release;
12 • Numerous documents summarizing and analyzing the results of game
13 play tests with feedback on which features were positively received and
14 which need improvement and why; and
15 • Financial-related information, including how different features and
16 mechanics have performed.

17 8. Scopely has similarly shown a complete disregard for Zynga's
18 intellectual property and the contractual obligations of Zynga's current and former
19 employees. Prior to going to work for Scopely, Barlach worked for Zynga as its
20 General Manager of *Hit It Rich! Slots* ("*Hit It Rich!*"). During his employment,
21 Barlach was contractually obligated not to "directly or indirectly solicit away
22 employees or consultants" of Zynga. Forensic examination of Barlach's Zynga-
23 issued computer revealed that when Barlach accepted Scopely's offer of
24 employment, he also offered to help Scopely raid Zynga's workforce. Scopely
25 responded:

26 "Thanks!! I was saving that for your first day! LOL I would be happy
27 to hear about anyone you think I should be trying to speak with.

28 Obviously I know you have the clause about not taking people so I am

1 always careful 😊” (Smiling emoji included in original text.)

2 9. Knowing about Barlach’s obligations to Zynga, Scopely should have
3 responded that it had no interest in Barlach violating his commitments. Instead,
4 Scopely responded by “laughing out loud” and admitting that, if Barlach had not
5 offered to violate his contractual obligations to Zynga, Scopely would have asked
6 him to do so on his very first day.

7 10. Scopely made good on Barlach’s offer of assistance. Around the time
8 Barlach resigned, Scopely solicited two other key players in Zynga’s Slots group,
9 Chuck Hess (“Hess”), Chief Technology Officer, Slots, and Matthew Copeland
10 (“Copeland”), Divisional Executive Producer, Slots, and also hired Derek Heck
11 (“Heck”), a Product Manager of *Wizard of Oz Slots* and *Willy Wonka Slots*, and
12 Evan Hou (“Hou”), a Manager, Data Analytics who was embedded on the *Hit It*
13 *Rich!* team. Indeed, Hou was solicited by Scopely no later than September 6, 2016,
14 the first business day after Barlach’s employment at Zynga ended.

15 11. It is now clear that Scopely’s employee raiding efforts did not start
16 with Barlach. The day after Maietti signed a Termination Certification in which
17 Maietti agreed not to “directly or indirectly, solicit, induce, recruit or encourage any
18 of [Zynga’s] employees to leave their employment,” Scopely’s Chief People
19 Officer, Jessica Neal (“Neal”) contacted and solicited a Zynga Lead Product
20 Manager, Joshua Park (“Park”), who had worked closely with Maietti for a period
21 of time on *FarmVille 2*. When Park attended his interviews with Scopely at its
22 headquarters in Los Angeles, his first interview was with Maietti, who encouraged
23 Park to leave Zynga for Scopely. During Park’s interviews, a Scopely executive
24 also questioned Park on Zynga’s future plans for one of its biggest games, *Words*
25 *with Friends*, a socially interactive game on which Scopely rode the coattails with
26 spinoffs *Yahtzee® with Buddies* and *Dice with Buddies™*.

27 12. Further discovery is needed to investigate the extent of Scopely’s
28 employee raiding efforts and intentional interference with Zynga’s contracts, as

1 well as other suspicious computer activity by several key Zynga employees who
2 have joined Scopely since July 2016, including Heck and Hou. Forensic analysis
3 has revealed that Barlach, Heck, and Hou all attached external USB devices to their
4 Zynga-issued laptop computers in the weeks before resigning to go to work for
5 Scopely. Heck also deleted more than 24,000 files and folders in the last month of
6 his employment with Zynga, and referenced articles entitled, “How to erase my
7 hard drive and start over” and “How to Erase a Computer Hard Drive - How To
8 Articles.”

9 13. Zynga is informed and believes that Maietti, Barlach, Hou, and Heck
10 currently work for Scopely in similar roles to their prior positions at Zynga. The
11 data taken from Zynga could be used not only to improve Scopely’s directly-
12 competing socially interactive games, but also to undermine Zynga’s release of
13 Project Mars, and to improve Scopely’s understanding of Zynga’s game mechanics,
14 monetization techniques, and business model.

15 14. Upon learning of these facts, Zynga promptly brought this lawsuit
16 seeking judicial relief. When Maietti first resigned in July, he reaffirmed in writing
17 that he had returned all of Zynga’s trade secrets and would not solicit its employees.
18 At that time, Zynga had no reason to believe that its rights were being violated.
19 Similarly, Barlach concealed the fact that he had accepted a position with Scopely
20 for nearly a month after he signed an offer letter, leaving Zynga unaware of the
21 pattern emerging before it.

22 15. But as soon as Zynga realized that its key talent was being solicited
23 and hired by Scopely with increasing frequency, Zynga commissioned a forensic
24 examination of the departed employees’ computers, going back to Maietti’s
25 resignation months earlier. Then and only then did Zynga begin to learn the extent
26 of Defendants’ wrongdoing. To protect its most valuable intellectual property and
27 to put a stop to Defendants’ wrongful course of conduct, Zynga immediately filed
28 this lawsuit.

JURISDICTION AND VENUE

16. The Court has subject matter jurisdiction over Zynga's claim under the federal Defend Trade Secrets Act pursuant to 18 U.S.C. § 1836 and over Zynga's supplemental state-law claims pursuant to 28 U.S.C. § 1367.

17. Venue is proper in this Court under 28 U.S.C. § 1391(a) because a substantial part of the events that gave rise to Zynga's claims took place within the District, Defendants' tortious conduct was directed at this District, and because Zynga was injured by Defendants' tortious conduct committed in this District.

THE PARTIES

18. Plaintiff Zynga is a Delaware corporation and has its principal place of business in San Francisco, California.

19. Zynga is informed and believes, and thereupon alleges, that Defendant Scopely, Inc. is a Delaware corporation with its principal place of business at 3530 Hayden Avenue A, Culver City, California.

20. Zynga is informed and believes, and thereupon alleges, that at all times relevant to this Complaint, Defendant Massimo Maietti was, and continues to be, a resident of San Francisco and Los Angeles Counties, in the State of California.

21. Zynga is informed and believes, and thereupon alleges, that at all times relevant to this Complaint, Defendant Ehud Barlach was, and continues to be, a resident of San Francisco and Los Angeles Counties, in the State of California.

22. Each Defendant has willfully aided and abetted each of the other Defendants in the wrongful concerted action described herein, or acted with or in furtherance of that action, or assisted in carrying out its purposes alleged in this Complaint.

23. Defendants, and each of them, are individually sued as participants and aiders and abettors in the wrongful conduct complained of herein, and the liability of each arises from the fact that each has engaged in all or part of the improper acts, plans, schemes, conspiracies, or transactions complained of herein.

FACTUAL BACKGROUND

A. Zynga Is A Leader Of The Social Gaming Industry.

24. Founded in 2007, Zynga is one of the world's leading social gaming companies and a top developer of game applications for mobile devices and the world's most popular social networking sites. Zynga makes and distributes a variety of online social games, which are played simultaneously by millions of users.

25. Over the course of many years, and at substantial expense, Zynga has developed and maintained significant amounts of highly confidential information that is proprietary to it, including without limitation, data related to its methodologies for creating, developing, and optimizing online social games, unreleased games, new game ideas, strategic roadmaps, feature designs, user feedback, monetization plans and efforts, statistical data gathering and metrics, confidential revenue data, negative knowledge based on trial and error, and sensitive personnel data.

26. Zynga's most valuable property is its intellectual property, and specifically, the computer code and other digital assets that make its games function. Zynga's games are distributed digitally over the internet and constantly updated, tuned, and improved to engage its users. And if, as here, the building blocks of those games are copied, it would permit a competitor (like Scopely) to create knock-off copies of Zynga's products at a fraction of the cost, undercutting Zynga's position in the market and providing an unjust competitive boost to the perpetrators.

27. Because of the highly competitive nature of the online social gaming industry, and because Zynga needs to maintain its competitive position through the protection of its sensitive business data, Zynga takes reasonable steps to ensure that its confidential business data is protected.

1 **B. Scopely Is A Competitor Of Zynga In The Online Gaming**
 2 **Industry.**

3 28. Founded in 2011, Defendant Scopely creates social games similar to
 4 those created by Zynga, including *Yahtzee® with Buddies* and *Dice with Buddies™*,
 5 that seemingly rode to success on the back of Zynga’s highly successful socially
 6 interactive game, *Words with Friends*. Based in Los Angeles, Scopely touts itself
 7 as “the #2 fastest growing tech company in America,” and claims to “bring[]
 8 together the brightest minds across gaming and entertainment.” Scopely’s bright
 9 minds, however, were not developed by Scopely. They are coming from Zynga
 10 improperly, along with the company’s trade secrets, confidential, and proprietary
 11 information.

12 **C. Defendant Maietti Was Contractually Obligated To Protect**
 13 **Zynga’s Confidential, Proprietary, And Trade Secret Information,**
 14 **And To Return That Information Upon The Termination Of His**
 Employment.

15 29. In January 2011, Zynga hired Maietti as a Game Designer. In his
 16 roles, Maietti occupied a special position of trust and confidence within Zynga,
 17 which included intimate involvement in some of Zynga’s most successful and
 18 highly-anticipated games, including *FarmVille 2* and Project Mars.

19 30. *FarmVille2* was released in 2012 and is one of Zynga’s most
 20 successful and profitable games. Between 2012 and 2015, Maietti was a Lead
 21 Designer and Director of Design of *FarmVille 2*, responsible for designing new
 22 features and content to be released in the game. In 2014, Zynga released several
 23 “bold beats” meant to attract and retain users to the game by releasing upgrades and
 24 new features on a quarterly basis. During his work on *FarmVille 2*, Maietti was the
 25 creative lead for multiple bold beats, significantly contributing to the game’s
 26 overall success that year. After working on *FarmVille 2*, Maietti transitioned to
 27 work on a new project, and was assigned to join the Project Mars team as its
 28 Creative Director.

1 31. On Project Mars, Maietti was primarily responsible for the creative
2 direction of the game, as well as supervising and managing the entire design team.
3 Project Mars is not simply another Zynga game; it is a cutting edge, highly-
4 anticipated newest iteration of one of Zynga's most successful interactive social
5 games, which Zynga expects will change the standards of social gaming throughout
6 the industry when it is released.

7 32. In connection with his position at Zynga, Maietti was provided with
8 access to Zynga's confidential, proprietary, and trade secret information related to
9 Zynga's existing, and yet-to-be released games, including Project Mars. As a
10 condition of his employment, therefore, Maietti executed an Employment Invention
11 Assignment and Confidentiality Agreement ("EIACA"), which provides, in
12 pertinent part, that:

- 13 a) Maietti "understand[s] that [his] employment by the Company creates
14 a relationship of confidence and trust with respect to any information
15 of a confidential or secret nature that may be disclosed to [him] by the
16 Company . . . and that the Company has taken reasonable measures
17 under the circumstances to protect from unauthorized use or
18 disclosure";
- 19 b) Maietti agreed that the information protected by the EIACA
20 ("Proprietary Information") includes, among other things, "game
21 information, [including] features, roadmaps, plans, specifications,
22 mechanics, designs, costs and revenue," "techniques and methods for
23 developing, coding, or improving online social games;" "measurement
24 techniques, and specific functionality that increases monetization and
25 both measures and increases retention metrics," "non-public financial
26 information, which may include revenues, profits, margins, forecasts,
27 budgets and other financial data," "marketing and advertising plans,
28 strategies, tactics, budgets and studies; . . . business and operations

1 strategies,” “research and development plans,” and “employment and
2 personnel information”;

3 c) Maietti agreed that he would “[a]t all times, both during [his]
4 employment and after its termination, . . . keep and hold all such
5 Proprietary Information in strict confidence and trust . . . [and not] . . .
6 use, disclose, copy, reverse-engineer, distribute, gain unauthorized
7 access or misappropriate any Proprietary Information without the prior
8 written consent of the Company except as may be necessary to
9 perform [his] duties as an employee of the Company for the benefit of
10 the company”;

11 d) Maietti agreed that he would, “[u]pon termination of [his] employment
12 with the Company, . . . promptly deliver to the Company all
13 documents and materials of any nature or form, in [his] possession,
14 custody or control, pertaining to [his] work with the Company and,
15 upon Company request, will execute a document confirming [his]
16 agreement to honor [his] responsibilities contained in this Agreement”;

17 e) Maietti agreed that “in the event of a breach or threatened breach of
18 this Agreement by [him] the Company may suffer irreparable harm
19 and will therefore be entitled to injunctive relief to enforce this
20 Agreement”; and

21 f) Maietti agreed that “for a period of one (1) year [after his employment
22 ends, he] will not directly or indirectly solicit away employees or
23 consultants of the Company for [his] own benefit or for the benefit of
24 any other person or entity.”

D. Shortly Before His Departure From Zynga, Maietti Copied Nine Zip Files To A USB Drive, Downloaded A Complete Working Version of Project Mars, And Accessed Over 13,000 Files Containing Zynga's Trade Secrets, Confidential, And Proprietary Information.

33. Zynga is informed and believes, and thereupon alleges, that by early May 2016, and likely earlier, Maietti was being recruited by and was considering employment with Scopely.

34. On July 6, 2016, Maietti signed an offer letter, officially accepting employment with Scopely. Before leaving Zynga, on June 24 and June 28, 2016, Maietti downloaded a Mac-usable working version of the Project Mars social game, which was nearly complete at that time. A person with access to this file could then load and play the game on a Mac computer, or decompile and access the client-side source code for the game. Maietti would have had no work-related purpose for downloading a Mac-usable working version of the game.

35. On July 4, 2016 – a holiday – just one day before he provided notice of his resignation to Zynga and after he accepted employment with Scopely, Maietti connected an external USB device to his Zynga-issued laptop, ran a Google search for how to “download a google drive folder,” and minutes later copied nine zip files containing Zynga’s trade secrets, and confidential, and proprietary information. These nine zip files included file names that are identical to files in Zynga’s Google Drive account (other than the addition of the date on which Maietti downloaded them), including:

- (1) Project_Mars-2016-07-04;
- (2) FV2-2016-07-04;
- (3) FtV2-2016-07-04;
- (4) Farm_2_-_LE_and_Feature_Content-2016-07-04;
- (5) CastleVille-2016-07-04;
- (6) CastleVille_Documentation-2016-07-04;
- (7) ArcadeVille-2016-07-04;

1 (8) Z-Platform-2016-07-04; and

2 (9) SDP's - 2016-07-04.

3 36. Some of the game files Maietti took were projects on which Maietti
4 worked and had significant responsibility in designing the games, including Project
5 Mars and *FarmVille2*. Some of the games have been released to the public and
6 some have not.

7 37. Zynga is informed and believes, and thereupon alleges, that Maietti
8 took nearly every file Zynga had in its possession related to Project Mars, including
9 but not limited to, user concepts, theme testing, art exploration, core design,
10 promotional materials, and feedback surveys. With these essential building blocks
11 and templates, a knowledgeable team could replicate a working version of the entire
12 game—or a knock-off version, as Scopely has been known to do—which has taken
13 Zynga 18 months and significant investment and resources to create.

14 38. Maietti's actions on the morning of July 4th speak for themselves:

- 15 • 9:01 a.m. - External USB device connected to laptop
- 16 • 9:04 a.m. - Google search for "download a google drive folder"
- 17 • 9:06 a.m. - Zip files downloaded to laptop
- 18 • 9:20 a.m. - Zip files copied onto external USB device
- 19 • 10:18 a.m. – Original Zip files placed in Trash (but not the copies
20 Maietti created on his USB device)

21 39. Maietti had no legitimate business purpose to copy the contents of
22 these folders, containing over 14,000 files relating to design, marketing, and
23 development of Zynga games.

24 40. Zynga is informed and believes, and thereupon alleges, that Maietti not
25 only retained this data after leaving Zynga, but did so in connection with his plans
26 to join Scopely. Maietti is now employed by Scopely as a Vice President and
27 General Manager of Product Development, developing games that are intended to
28 compete directly with Zynga.

1 41. The next day, on July 5, 2016, Maietti informed his supervisor, Pete
2 Hawley (“Hawley”), that he intended to resign from Zynga to accept a position with
3 Scopely. Hawley responded by instructing Maietti not to take any documents or
4 information from Zynga and not to target employees on his team for employment
5 with Scopely. That same day, Hawley informed Zynga’s human resources
6 department of Maietti’s resignation, and stated that Maietti’s resignation may need
7 to be effective immediately.

8 42. On July 7, 2016, the final day of his employment with Zynga, Maietti
9 also accessed approximately 13,000 Project Mars files stored on a local drive
10 between 4:36 p.m. and 4:59 p.m. On information and belief, Maietti copied those
11 files to a personal Box Sync folder on his desktop which uploaded the documents to
12 his account on Box, a cloud-based storage and sharing application. After copying
13 the Project Mars files to his Box Sync folder, Maietti deleted the local folder from
14 his laptop. Similarly, on July 7, 2016, seven files once existed in a Dropbox folder
15 on Maietti’s laptop. The folder and its contents were subsequently deleted that
16 same day. Again, Maietti had no legitimate business purpose for engaging in these
17 actions.

18 43. On July 7, 2016, over 20,000 files and folders were located within the
19 Trash on Maietti’s laptop, but were permanently removed by Maietti before his
20 resignation from Zynga.

21 44. On information and belief, Maietti commenced employment with
22 Scopely on July 11, 2016, though he was paid by Zynga through July 21, 2016.

23 45. On July 12, 2016, Maietti signed and delivered to Zynga a
24 “Termination Certification,” in which he certified that he did “not have in [his]
25 possession, [nor had he] failed to return, any devices, records, data, notes, reports,
26 proposals, lists, correspondence, specifications, drawings, blueprints, sketches,
27 materials, equipment, other documents or property, or reproductions of any
28 aforementioned items belonging to Zynga, Inc.” Maietti further certified that,

1 consistent with his EIACA, for a period of twelve months following his resignation,
 2 he would not “directly or indirectly, solicit, induce, recruit or encourage any of
 3 [Zynga’s] employees to leave their employment.”

4 46. The very next day, on July 13, 2016, Scopely’s Chief People Officer,
 5 Neal, emailed via LinkedIn and solicited a Zynga Lead Product Manager, Park,
 6 with whom Maietti had worked closely on *FarmVille 2*. Neal explained that she
 7 had heard favorable feedback about Park from her “network”, and she wanted to
 8 speak with Park about potential employment opportunities at Scopely. Prior to
 9 receiving this message, Park had never communicated with Neal and did not know
 10 her.

11 47. On August 15, 2016, Park attended interviews at Scopely’s
 12 headquarters in Los Angeles, and his first interview was with Maietti. During the
 13 interview, Maietti attempted to convince Park to join Scopely, promising him more
 14 responsibility at Scopely than Park enjoyed at Zynga. On August 29, 2016, Park
 15 received a job offer from Scopely, which he ultimately declined.

16 **E. Defendant Barlach Was Contractually Obligated To Protect**
 17 **Zynga’s Confidential, Proprietary, And Trade Secret Information,**
 18 **And To Return That Information Upon The Termination Of His**
Employment.

19 48. In November 2013, Zynga hired Barlach as Director of Operations,
 20 Real Money Gaming. Barlach worked as the General Manager of *Hit It Rich!* at the
 21 time of his departure from Zynga. In connection with his position at Zynga,
 22 Barlach was provided with access to Zynga’s confidential, proprietary, and trade
 23 secret information related to Zynga’s existing, and yet-to-be released games. As a
 24 condition of his employment, therefore, Barlach executed an EIACA, which
 25 provides, in pertinent part, that:

- 26 a) Barlach “understand[s] that [his] employment by the Company creates
 27 a relationship of confidence and trust with respect to any information
 28 of a confidential or secret nature that may be disclosed to [him] by the

1 Company . . . and that the Company has taken reasonable measures
2 under the circumstances to protect from unauthorized use or
3 disclosure”;

4 b) Barlach agreed that the information protected by the EIACA
5 (“Proprietary Information”) includes, among other things, “game
6 information, [including] features, roadmaps, plans, specifications,
7 mechanics, designs, costs and revenue,” “techniques and methods for
8 developing, coding, or improving online social games;” “measurement
9 techniques, and specific functionality that increases monetization and
10 both measures and increases retention metrics,” “non-public financial
11 information, which may include revenues, profits, margins, forecasts,
12 budgets and other financial data,” “marketing and advertising plans,
13 strategies, tactics, budgets and studies; . . . business and operations
14 strategies,” “research and development plans,” and “employment and
15 personnel information”;

16 c) Barlach agreed that he would “[a]t all times, both during [his]
17 employment and after its termination, . . . keep and hold all such
18 Proprietary Information in strict confidence and trust . . . [and not] . . .
19 use, disclose, copy, reverse-engineer, distribute, gain unauthorized
20 access or misappropriate any Proprietary Information without the prior
21 written consent of the Company except as may be necessary to
22 perform [his] duties as an employee of the Company for the benefit of
23 the company”;

24 d) Barlach agreed that he would, “[u]pon termination of [his]
25 employment with the Company, . . . promptly deliver to the Company
26 all documents and materials of any nature or form, in [his] possession,
27 custody or control, pertaining to [his] work with the Company and,
28 upon Company request, will execute a document confirming [his]

agreement to honor [his] responsibilities contained in this Agreement”;

e) Barlach agreed that “in the event of a breach or threatened breach of this Agreement by [him] the Company may suffer irreparable harm and will therefore be entitled to injunctive relief to enforce this Agreement”; and

f) Barlach agreed that “for a period of one (1) year [after his employment ends, he] will not directly or indirectly solicit away employees or consultants of the Company for [his] own benefit or for the benefit of any other person or entity.”

F. Shortly Before His Departure From Zynga, Barlach Accessed Zynga Game Files And Folders In A Dropbox Account And Attached A USB Drive To His Zynga-Issued Computer.

49. Zynga is informed and believes, and thereupon alleges, that by early July 2016, and likely earlier, Barlach was being recruited by and was considering employment with Scopely.

50. On July 21, 2016, Christina Dunbar (“Dunbar”), Scopely’s Talent Strategy Partner, sent an iMessage to Barlach, confirming his travel itinerary, presumably related to interviews in Los Angeles with Scopely. Ten days later, on July 31, 2016, Barlach received another iMessage from Scopely, confirming that he had received Scopely’s offer letter.

51. On August 8, 2016, Barlach accessed numerous Dropbox files and folders with the title “HIR,” which stands for Zynga’s game, *Hit It Rich!*, including, but not limited to “SIR + HIR Export Strategy_July 2016.pdf,” “HIR, SIR, TV Benchmark Report_July 2016.pdf,” and “Zynga.”

52. On August 10, 2016, while still employed by Zynga, Barlach sent an iMessage to Dunbar, offering to consult with her regarding other Zynga employees that could be targeted for employment with Scopely. Dunbar responded: “Thanks!! I was saving that for your first day! LOL I would be happy to hear about

1 anyone you think I should be trying to speak with. Obviously I know you have the
2 clause about not taking people so I am always careful ☺”

3 53. On August 22, 2016, after accepting employment with Scopely,
4 Barlach connected an external USB to his Zynga-issued computer. Zynga is
5 informed and believes, and thereupon alleges that Barlach copied and transferred a
6 folder titled “Hit It Rich!” onto this external USB drive.

7 54. On August 24, 2016, Barlach sent an email to Zynga employees
8 announcing that he was resigning from Zynga and that his last day would be on
9 September 2, 2016. Barlach withheld that he was going to a direct-competitor of
10 Zynga, and instead evasively stated that he was “offered a role which is great
11 opportunity.” Even when Barlach was directly asked by Zynga employees, he
12 refused to disclose that he was going to Scopely, stating “Not saying where I’m
13 going yet ☺.”

14 55. On September 1, 2016, Barlach signed and delivered to Zynga a
15 “Termination Certification,” in which he certified that he did “not have in [his]
16 possession, [nor had he] failed to return, any devices, records, data, notes, reports,
17 proposals, lists, correspondence, specifications, drawings, blueprints, sketches,
18 materials, equipment, other documents or property, or reproductions of any
19 aforementioned items belonging to Zynga, Inc.” Barlach further certified that,
20 consistent with his EIACA, for a period of twelve months following his resignation,
21 he would not “directly or indirectly, solicit, induce, recruit or encourage any
22 [Zynga] employees to leave their employment.”

23 56. While Barlach’s final day at Zynga was on September 1, 2016, he was
24 officially terminated from his position at Zynga on September 2, 2016. Barlach
25 was paid by Zynga through September 2, 2016.

26 57. Around the time of Barlach’s resignation, and after Barlach had agreed
27 to consult with Scopely regarding the recruitment of other Zynga employees,
28 Scopely solicited two other key players in Zynga’s Slots group, Hess, Chief

1 Technology Officer, Slots, and Copeland, Divisional Executive Producer, Slots, and
 2 Scopely solicited and hired Heck and Hou from the Slots group.

3 **G. Additional Zynga Employees Copy Zynga's Trade Secrets,**
 4 **Confidential, and Proprietary Information Prior To Resigning To**
 5 **Accept Positions With Scopely.**

6 58. On September 3, 2016, the day after Barlach resigned and six days
 7 before Heck himself resigned to accept a position with Scopely, Heck, like Barlach
 8 and Maietti, attached an external USB device to his Zynga-issued laptop computer.
 9 Heck went through extraordinary efforts to cover his tracks, which included
 10 clearing his internet history and deleting more than 24,000 files and folders in the
 11 last month of his employment with Zynga. Forensic analysis of Heck's computer
 12 also revealed that Heck referenced articles on his Zynga computer entitled, "How to
 13 erase my hard drive and start over" and "How to Erase a Computer Hard Drive -
 14 How To Articles." Heck had no legitimate business purpose for engaging in these
 15 actions. On September 9, 2016, Heck resigned from his position at Zynga to work
 16 for Scopely.

17 59. On October 9 and 10, 2016, the two days before his last day at Zynga,
 18 Hou, like Maietti, Barlach, and Heck, connected an external USB device to his
 19 Zynga-issued computer. On October 11, 2016, Hou resigned from his position with
 20 Zynga to work for Scopely.

21 60. Zynga is informed and believes that Maietti, Barlach, Hou, and Heck
 22 currently work for Scopely in similar roles to their prior positions at Zynga. The
 23 data taken from Zynga by Maietti, Barlach, Hou, and Heck could be used not only
 24 to improve Scopely's directly-competing socially interactive games, but also to
 25 undermine Zynga's release of Project Mars, and to improve Scopely's
 26 understanding of Zynga's game mechanics, monetization techniques, and business
 27 model.

28 61. Zynga is informed and believes that Scopely has benefitted and will

1 continue to benefit from its continuing possession of and/or access to Zynga's
2 confidential, proprietary, and trade secret information.

3 62. Zynga is informed and believes, and thereupon alleges that, with
4 respect to each and every allegation set forth in Paragraphs 1-61, inclusive,
5 Defendants and each of them conspired and agreed to undertake the above-
6 described acts in furtherance of their conspiracy, with knowledge of the nature and
7 goals of the conspiracy and its unlawful purpose.

8 63. If Defendants are not immediately restrained from accessing,
9 disclosing, using, and/or destroying Zynga's stolen data, Zynga will continue to
10 suffer irreparable and irreversible harm.

11 **FIRST CAUSE OF ACTION**

12 **(Violation of the Defend Trade Secrets Act – Against Defendants Scopely and** 13 **Maietti)**

14 64. Zynga incorporates by reference paragraphs 1 through 63 of this
15 Complaint.

16 65. Zynga enjoys an advantage over its existing and would-be competitors
17 based, in part, on the trade secret information it has developed and implemented in
18 its effort to become and remain a market leader in online games. That trade secret
19 information includes data related to its methodologies for creating, developing, and
20 optimizing online social games, unreleased games, new game ideas, strategic
21 roadmaps, monetization plans and efforts, statistical data gathering and metrics,
22 confidential revenue data, negative knowledge based on trial and error, and
23 sensitive personnel data.

24 66. Zynga has made reasonable efforts under the circumstances to preserve
25 the confidentiality of its trade secrets. Among other things, Zynga requires its
26 employees (specifically including but not limited to defendant Maietti) to enter into
27 agreements that protect the confidentiality of its trade secrets and uses physical and
28 technological security measures to prevent unauthorized acquisition of its trade

1 secrets.

2 67. Zynga's confidential information derives independent economic value
3 from not being generally known to the public or to other persons who can obtain
4 economic value from its disclosure or use. A competitor could use this information
5 to create games more efficiently and market games more effectively. Accordingly,
6 the above-described information constitutes "trade secrets" within the meaning of
7 the Defend Trade Secrets Act ("DTSA"), 18 U.S.C. § 1839.

8 68. Maietti was and remains under a duty both to keep Zynga's
9 confidential, proprietary or trade secret information secret, and not to copy, use, or
10 disclose such information other than for the benefit of Zynga and with Zynga's
11 authorization. By taking this information from Zynga without its authorization,
12 Maietti knew or should have known that he acquired such information under
13 circumstances giving rise to a breach of a duty to maintain its secrecy and limit its
14 use. Indeed, Maietti signed a certification at the time of his termination
15 acknowledging this duty and affirming that he had returned Zynga's trade secret
16 information, which again reminded Maietti of his obligations at the crucial time of
17 his separation from employment.

18 69. Defendants misappropriated Zynga's trade secrets through the
19 unauthorized taking and retention of Zynga's trade secret information, including
20 through Maietti's actions in the final weeks of his employment, including
21 downloading, copying, and erasing digital files containing Zynga's confidential
22 information and, on information and belief, taking those files to Scopely.

23 70. Defendants' actual and threatened misappropriation was and is being
24 carried out without the express or implied consent of Zynga.

25 71. Zynga is informed and believes that Defendants obtained the trade
26 secret information described above directly or indirectly from Zynga and not from
27 generally available information or through their own independent research and
28 efforts.

1 72. Defendants' actions constitute willful misappropriation and/or
2 threatened misappropriation of Zynga's trade secrets under the DTSA. On
3 information and belief, Maietti deliberately copied Zynga trade secrets in the days
4 and weeks before he resigned for the specific purpose of taking them to Scopely.
5 Those trade secrets related to projects on which he was currently working and
6 others that he had worked on previously, and related to games that had been
7 released and others that had not. After Maietti gave notice of his resignation,
8 Zynga reminded Maietti of his obligation not to misappropriate Zynga trade secrets
9 and instructed him to return all documents containing trade secrets to Zynga.
10 Significantly, Maietti confirmed in writing that he had returned all trade secrets to
11 Zynga, but on information and belief Maietti's written confirmation was knowingly
12 false. Maietti's misappropriation of Zynga trade secrets was not accidental; it was
13 willful.

14 73. Defendants' actual and threatened misappropriation of Zynga's trade
15 secrets, unless and until enjoined and restrained by order of this Court, is causing
16 and will continue to cause great and irreparable harm to Zynga. Zynga is
17 threatened with losing its intellectual property as well as current and potential
18 business.

19 74. Zynga has no adequate remedy at law for the injuries currently being
20 suffered, and the additional injuries that are threatened, because it would be
21 impossible to quantify in dollars the losses described above when this matter is
22 finally adjudicated. Defendants will continue to engage in their wrongful conduct
23 and Zynga will continue to suffer irreparable injury that cannot be adequately
24 remedied at law unless Defendants are enjoined from engaging in any further such
25 acts of misappropriation.

26 75. In addition, as a direct and proximate cause of Defendants'
27 misappropriation of Zynga trade secrets, Defendants have been unjustly enriched in
28 an amount to be ascertained at trial, and Zynga has sustained, and will continue to

1 sustain, actual damages in an amount to be proven at trial. Zynga also has suffered
2 irreparable harm as a result of Defendants' actions.

3 76. Each of the acts of misappropriation was done willfully and
4 maliciously by Defendants with the deliberate intent to injure Zynga's business and
5 improve their own business and for financial gain, thereby entitling Zynga to
6 exemplary damages and/or attorneys' fees to be proved at trial.

7 **SECOND CAUSE OF ACTION**

8 **(Breach of Contract – Against Defendant Maietti)**

9 77. Zynga incorporates by reference paragraphs 1 through 76 of this
10 Complaint.

11 78. As a condition of his employment with Zynga, Maietti executed
12 Zynga's Employment Invention Assignment and Confidentiality Agreement
13 ("EIACA"), a true and correct copy of which is attached hereto as Exhibit A.
14 Maietti also executed a Termination Certification, a true and correct copy of which
15 is attached hereto as Exhibit B.

16 79. Maietti's EIACA and Termination Certification with Zynga constitute
17 valid, binding and enforceable contracts that require Maietti to maintain the secrecy
18 of Zynga's confidential, proprietary, and trade secret information, and to return all
19 such information, documents, and property of Zynga upon termination of his
20 employment with Zynga.

21 80. The EIACA and Termination Certification that Maietti entered into
22 with Zynga also required Maietti, for a period of one year after the end of his
23 employment, to not directly or indirectly solicit, recruit, encourage or induce Zynga
24 employees for his own benefit or for the benefit of any other person or entity.

25 81. Zynga has performed (or was excused from performing) all of its
26 obligations under the EIACA and Termination Certification.

27 82. Maietti breached his contractual obligations to Zynga by (a) taking
28 information belonging to Zynga without its knowledge or authorization, and for

1 reasons unrelated to the performance of his duties for Zynga; (b) failing to return
 2 Zynga's data upon leaving Zynga's employ; (c) on information and belief,
 3 disclosing Zynga's confidential, proprietary, and/or trade secret information to,
 4 and/or using such information on behalf of, his new employer Scopely and/or its
 5 agents; and (d) on information and belief, directly or indirectly soliciting,
 6 recruiting, encouraging, and/or inducing Zynga employees to resign from Zynga
 7 and join Scopely.

8 83. As a proximate result of Maietti's breach of contract, Zynga has
 9 suffered, and will continue to suffer, general and special damages in an amount to
 10 be proven at trial. Zynga seeks compensation for all damages and losses
 11 proximately caused by these breaches.

12 **THIRD CAUSE OF ACTION**

13 **(Breach of Contract – Against Defendant Barlach)**

14 84. Zynga incorporates by reference paragraphs 1 through 83 of this
 15 Complaint.

16 85. As a condition of his employment with Zynga, Barlach executed an
 17 EIACA, a true and correct copy of which is attached hereto as Exhibit C. Barlach
 18 also executed a Termination Certification, a true and correct copy of which is
 19 attached hereto as Exhibit D.

20 86. The EIACA and Termination Certification with Zynga constitute valid,
 21 binding and enforceable contracts that require Barlach to maintain the secrecy of
 22 Zynga's confidential, proprietary, and trade secret information, and to return all
 23 such information, documents, and property of Zynga upon termination of his
 24 employment with Zynga.

25 87. The Barlach EIACA and Termination Certification that Barlach
 26 entered into with Zynga also required Barlach, for a period of one year after the end
 27 of his employment, to not directly or indirectly solicit, recruit, encourage or induce
 28 Zynga employees for his own benefit or for the benefit of any other person or

1 entity.

2 88. Zynga has performed (or was excused from performing) all of its
3 obligations under the EIACA and Termination Certification.

4 89. Barlach breached his contractual obligations to Zynga by (a) on
5 information and belief, taking information belonging to Zynga without its
6 knowledge or authorization, and for reasons unrelated to the performance of his
7 duties for Zynga; (b) on information and belief, failing to return Zynga's data upon
8 leaving Zynga's employ; (c) on information and belief, disclosing Zynga's
9 confidential, proprietary, and/or trade secret information to, and/or using such
10 information on behalf of, his new employer Scopely and/or its agents; and (d) on
11 information and belief, directly or indirectly soliciting, recruiting, encouraging,
12 and/or inducing Zynga employees to resign from Zynga and join Scopely.

13 90. As a proximate result of Barlach's breach of contract, Zynga has
14 suffered, and will continue to suffer, general and special damages in an amount to
15 be proven at trial. Zynga seeks compensation for all damages and losses
16 proximately caused by these breaches.

17 **FOURTH CAUSE OF ACTION**

18 **(Tortious Interference with Contract – Against Defendant Scopely)**

19 91. Zynga incorporates by reference paragraphs 1 through 63, 78, 80, 81,
20 82(d), 83, 85, 87, 88, 89(d), and 90 of this Complaint.

21 92. Maietti and Barlach were parties to binding contracts with Zynga,
22 including their EIACAs and Termination Certifications.

23 93. Zynga is informed and believes, and thereupon alleges, that at all
24 relevant times Defendant Scopely knew that Maietti and Barlach were signatories to
25 EIACAs and Termination Certifications with Zynga. On information and belief,
26 Scopely knew that the EIACAs and Termination Certifications required Maietti and
27 Barlach, among other things, not to directly or indirectly solicit away employees or
28 consultants of Zynga for benefit of any other person or entity. Scopely's

1 knowledge of their non-solicitation obligations is illustrated by Dunbar's message
2 to Barlach stating: "I would be happy to hear about anyone you think I should be
3 trying to speak with. Obviously I know you have the clause about not taking
4 people so I am always careful ☺" (Smiling symbol included in original.)

5 94. Zynga is informed and believes, and thereupon alleges, that Scopely
6 intentionally interfered with the EIACAs and Termination Certifications by
7 requesting that Maietti and Barlach assist in the solicitation of Zynga employees for
8 Scopely's benefit. Despite Scopely's knowledge of these obligations, Scopely
9 prioritized the targeting of Zynga employees, as illustrated by Dunbar's emphatic
10 message to Barlach stating: "I was saving that for your first day!" On information
11 and belief, this message was typical of Scopely's *modus operandi* to attempt to
12 induce each new hire from Zynga to identify other Zynga employees for solicitation
13 and to assist in the process of soliciting those employees.

14 95. Scopely interfered with Maietti's and Barlach's EIACAs and
15 Termination Certifications knowingly and with the intent to have Maietti and
16 Barlach breach their agreements. These acts by Scopely have caused and will
17 continue to cause Zynga to suffer economic damages proximately caused by the
18 intentional interference, including but not limited to the disruption of Scopely's
19 operations and unjust enrichment gained by Scopely.

20 96. These acts by Scopely also have caused and, unless enjoined, will
21 continue to cause irreparable damage to Zynga, including but not limited to loss of
22 competitive advantage, for which Zynga has no adequate remedy at law.

23 97. Each of the acts of interference was done willfully and maliciously by
24 Scopely, with the deliberate intent to injure Zynga's business and improve its own
25 business and for financial gain, thereby entitling Zynga to punitive damages and/or
26 attorneys' fees to be proven at trial. Scopely's willfulness is illustrated by Dunbar's
27 written expressions of laughter at Zynga's contractual rights in her message to
28 Barlach stating not only that she wanted to hear about Zynga employees whom

1 Scopely could solicit but also that she was laughing out loud—“LOL”—about
2 Barlach’s willingness to comply, despite his non-solicitation agreement.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff Zynga prays for judgment and relief as follows:

5 1. Temporary, preliminary and permanent injunctive relief enjoining
6 Scopely and Maietti from using or disclosing Zynga’s confidential information or
7 trade secrets, including but not limited to any information taken by any former
8 Zynga employees.

9 2. Preliminary and permanent injunctive relief enjoining Maietti and
10 Barlach from, directly or indirectly, soliciting, recruiting, encouraging or inducing
11 any Zynga employee to terminate his or her employment with Zynga in violation of
12 their EIACAs and/or Termination Certificates.

13 3. Preliminary and permanent injunctive relief enjoining Scopely from
14 encouraging, causing or permitting Maietti, Barlach or any other former Zynga
15 employee who is employed by Scopely from violating any contractual obligation
16 such person owes to Zynga not to, directly or indirectly, solicit, recruit, encourage
17 or induce any Zynga employee to terminate his or her employment with Zynga.

18 4. Temporary, preliminary, and permanent injunctive relief requiring the
19 immediate return of Zynga’s stolen data, in forensically sound fashion, preserving
20 all metadata of Zynga’s stolen data, and prohibiting the altering, destroying, or
21 disposing of any materials related to this action, including any confidential
22 information Defendants obtained from Zynga;

23 5. Compensatory damages, past and future, in an amount to compensate
24 Zynga;

25 6. General damages;

26 7. An accounting to establish, and an order requiring restitution and/or
27 disgorgement of, the sums by which Defendants have been unjustly enriched;

28 8. Exemplary and punitive damages for Defendants’ willful and

1 malicious actions;

2 9. Pre-judgment and post-judgment interest at the maximum rate allowed
3 by law;

4 10. Attorneys' fees and costs incurred by virtue of this action; and

5 11. For such other and further relief as the Court may deem proper.

6
7 Dated: November 29, 2016

8 DARIN SNYDER
9 ERIC AMDURSKY
O'MELVENY & MYERS LLP

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11 By: /s/ Eric Amdursky
12 Eric Amdursky
13 Attorneys for Plaintiff
14 Zynga, Inc.
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